

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

**KELLI DENISE GOODE, Individually,
and also as the Personal Representative
of Troy Charlton Goode, Deceased, and
as Mother, Natural Guardian, and Next
Friend of R.G., a Minor, and also on behalf
of all similarly situated persons**

Plaintiff,

**NO. 3:17-CV-060-DMB-RP
JURY DEMANDED**

THE CITY OF SOUTHAVEN, et al

Defendants.

**DEFENDANT OLIVER'S MOTION FOR SUMMARY JUDGMENT AND
MOTION FOR JUDGMENT ON THE PLEADINGS**

Defendant Lemuel D. Oliver, M.D., ("Dr. Oliver") through counsel, and pursuant to Federal Rules of Civil Procedure 56 and 12(c), files this Motion for Summary Judgment and Judgment on the Pleadings on the following grounds:

Judgment on the Pleadings as to Counts 1 – 4 and 10 – 13

Dr. Oliver requests judgment on the pleadings pursuant to Rule 12(c) and Rule 8, F.R.C.P., with respect to Counts 1 – 4 and 10 – 13 (all counts against Dr. Oliver except the claim of medical negligence in Count 14) on the basis that each of these claims depends on conclusory allegations that Dr. Oliver conspired with or acted in concert with other defendants and Plaintiff has failed to state facts that would make such a conspiracy or concerted action remotely plausible.

Summary Judgment on All Counts and Punitive Damages

Dr. Oliver requests summary judgment:

As to **Counts 1 – 4 and 10 – 13** (all counts against Dr. Oliver except the claim of medical negligence), on the basis that the evidence produced in discovery is insufficient to establish a conspiracy or concerted action that is necessary to establish the element of each of those count.

As to Plaintiff's claims for medical negligence (**Count 14**) and wrongful death (**Count 10**), on the basis that Plaintiff lacks the necessary expert proof to demonstrate any causal nexus between any alleged deviation in the standard of care and Troy Goode's death.

As to Plaintiff's claim for negligent and intentional infliction of emotional distress (**Count 11**), on the basis that Kelli Goode was not a bystander and the evidence does not meet the required elements necessary for recovery under these theories.

As to Plaintiff's claim for the common law tort of outrage (**Count 12**), on the basis that to the extent Mississippi law recognizes this tort, it is identical to a claim for intentional infliction of emotional distress and fails for the same reasons as Count 11.

As to **all counts** against him, on the basis that Mississippi's "wrongful conduct rule" bars the application of comparative fault where the plaintiff's violation of law proximately causes his own injury.

As to Plaintiff's claim for **punitive damages**, on the basis that the evidence is insufficient to prove facts that must be proven, by clear and convincing evidence, under the applicable Mississippi statute.

In support of this Motion, Dr. Oliver relies on a supporting Memorandum and on following:

1. Exhibit "A" – Deposition of Todd Baggett
2. Exhibit "B" – Deposition of Jason Scallorn

3. Exhibit "C" – Deposition of Dr. Lemuel Oliver
4. Exhibit "D" – Deposition of Dr. Mark Fowler
5. Exhibit "E" – Deposition of Dr. Michael Arnall
6. Exhibit "F" – Deposition of Dr. Parin Parikh
7. Exhibit "G" – Deposition of Dr. Cyril Wecht
8. Exhibit "H" – Deposition of Kelli Goode

Respectfully submitted, this the 23rd day of January, 2018.

RAINEY, KIZER, REVIERE & BELL, PLC

/s/ Marty R. Phillips

AMANDA C. WADDELL, MSB# 99544

MARTY R. PHILLIPS, *by pro hac vice*

50 North Front Street, Ste. 610

Memphis, TN 38103

mphillips@raineykizer.com

awaddell@raineykizer.com

J. RIC GASS, *by pro hac vice*

Gass Weber Mullins, LLC

241 North Broadway, Suite 300

Milwaukee, WI 53202

gass@gwmlaw.com

*Attorneys for Defendant, Lemuel Donja Oliver,
M.D.*

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of January, 2018, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing report. Parties may access this filing through the Court's electronic filing system.

Tim Edwards, Esq., BPR #5353
Kevin M. McCormack, Esq., BPR #29295
Ballin, Ballin & Fishman, P.C.
200 Jefferson Avenue, Suite 1250
Memphis, TN 38103

David W. Upchurch, Esq., MSB #10558
John M. McIntosh, Esq., BPR #030260
Upchurch & Upchurch, P.A.
P.O. Drawer 2529
Tupelo, MS 38803-2529

Hiram C. Eastland, III, Esq., MSB #101560
James F. Garrett, Esq. MSB #4759
Eastland and Garrett, PLLC
103 N. Lamar Blvd., Suite 204
Oxford, MS 38655

*Attorneys for Defendant Baptist
Memorial Hospital-Desoto, Inc.*

Attorneys for Plaintiff

Berkley N. Huskison, Esq., MSB #9582
L. Bradley Dillard, Esq., BPR #017333
Mitchell, McNutt & Sams, P.A.
P.O. Box 7120
Tupelo, MS 38802-7120

Matthew R. Macaw, Esq., MSB #103601
Joseph B. Baker, Esq., BPR #28046
Loys A. "Trey" Jordan, III, Esq. BPR #16766
Stephen P. Miller, Esq., BPR #15574
McDonald Kuhn
5400 Poplar Avenue, Suite 330
Memphis, TN 38119

*Attorneys for Defendants City of
Southaven, Todd Baggett, Jeremy Bond,
Tyler Price, Joel Rich, Jason Scallorn,
Stacie Graham, Mike Mueller, William
Painter, Jr., Bruce Sebring, and Richard
Weatherford*

*Attorneys for Defendant
Southeastern Emergency Physicians, Inc.*

/s/ Marty R. Phillips